

FEDERAL CIRCUIT COURT OF AUSTRALIA

BAJWA v MINISTER FOR IMMIGRATION & ANOR [2014] FCCA 2890

Catchwords:

MIGRATION – Review of Migration Review Tribunal decision – refusal of a skilled visa – whether Trades Recognition Australia Assessment skills assessment can be relied upon as bogus document – Public Interest Criterion 4020 – claim of apprehended bias based on similar decisions – no jurisdictional error.

Legislation:

Migration Act 1958, ss.65, 474, 476, 97
Migration Regulations 1994 (Cth)

Cases cited:

Plaintiff S157/2002 v The Commonwealth (2003) 211 CLR 476
Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323
Batra v Minister for Immigration and Citizenship [2012] FMCA 544
Kaur v Minister for Immigration and Border Protection & Anor [2013] FCCA 2209
Mudiyanselage v Minister for Immigration & Anor [2012] FMCA 887
Rafi v Minister for Immigration & Anor [2012] FMCA 1002
Mudiyanselage v Minister for Immigration and Citizenship [2013] FCA 266
Batra v Minister for Immigration and Citizenship (2013) 212 FCR 84
Singh v Minister For Immigration & Anor [2012] FMCA 145
Mudiyanselage v Minister for Immigration [2013] FCA 266
Bari v Minister for Immigration & Anor [2013] FMCA 14
Goodwin v Commissioner of Police [2012] NSWCA 379
SZQHH v Minister for Immigration and Citizenship (2012) 200 FCR 223
Re JRL; Ex parte CJL (1986) 161 CLR 342
Minister for Immigration and Multicultural Affairs v Jia Legeng (2001) 205 CLR 507

Applicant: GURANDITTA SINGH BAJWA

First Respondent: MINISTER FOR IMMIGRATION &
BORDER PROTECTION

Second Respondent: MIGRATION REVIEW TRIBUNAL

File Number: SYG 2373 of 2012

Judgment of: Judge Purdon-Sully

Hearing date: 28 February 2014

Delivered at: Brisbane

Delivered on: 10 December 2014

REPRESENTATION

Counsel for the Applicant: Mr M Steele

Solicitors for the Applicant: Milner Lawyers

Counsel for the First Respondent: Ms A Wheatley

Solicitors for the Respondents: Sparke Helmore Lawyers

ORDERS

- (1) That the amended application filed 16 September 2013 be dismissed
 - (i)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT BRISBANE

SYG 2373 of 2012

GURANDITTA SINGH BAJWA

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

MIGRATION REVIEW TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Introduction

1. By Application for Review filed 19 October 2012, as amended on 16 September 2013 Mr Guranditta Singh Bajwa (“the Applicant”) seeks a judicial review of a decision of the Migration Review Tribunal (“MRT”) made on 21 September 2012 affirming the decision of the First Respondent’s delegate on 9 March 2012 to refuse to grant the Applicant a Skilled (Provisional) (Class VC) Visa (“the visa”) under s.65 of the *Migration Act 1958* (“the Act”).

2. Unless the Applicant can establish that the MRT went beyond jurisdiction in making its decision, pursuant to s.474 of the Act the decision will be regarded as a privative clause decision and be final and conclusive.
3. The Applicant contends that there are two reasons that the decision of the MRT should be set aside because of jurisdictional error as later particularised.¹ He seeks that his application be allowed, together with costs.
4. The First Respondent seeks that the application be dismissed with costs.
5. For the reasons I shall now outline I am not satisfied that the MRT demonstrated jurisdictional error for the reasons contended and the Applicant's application must accordingly fail.

Background

6. The Applicant asserts to be a citizen of India born on 1 June 1985.
7. The Applicant came to Australia on a Student Subclass 572 visa granted on 2 August 2007.
8. On 4 December 2009 the Applicant applied for the visa.
9. Pursuant to s.65 of the Act the Minister can only grant a visa if the Minister is satisfied that the criteria described for that visa by the Act and the *Migration Regulations 1994* ("the Regulations") has been satisfied. The criteria for the visa are set out in Part 485 of Schedule 2 to the Regulations. The relevant clause is 485.224 which requires the Applicant to inter alia satisfy Public Interest Criterion (PIC) 4020.
10. To satisfy PIC 4020(1) there must be no evidence that the Applicant has given a bogus document or information that is false or misleading in a material particular or caused such a document or information to be given to the Minister, an officer, the Tribunal, a relevant assessment authority or Medical Officer of the Commonwealth inter alia in relation to the visa application.

¹ Para 19 Applicant's Outline of Submissions

11. One of the criteria for the visa is that the skills of the Applicant have been assessed by the relevant assessing authority as being suitable for the Applicant's nominated skilled occupation.
12. As part of his application for a visa the Applicant provided a work reference dated 5 September 2009 from Mr Baljit Binning the Manager and owner of the Maharajah restaurant ("the restaurant"). The letter inter alia confirmed that the Applicant was then working at the restaurant and had accumulated at least 922 hours of work experience as a cook.
13. On 15 February 2011 departmental officers visited the restaurant by arrangement with the owner to discuss the Applicant's employment reference which had been submitted to Trade Recognition Australia ("TRA") in 23 December 2009 for the purpose of obtaining a skills assessment. From the information provided by the owner the departmental officers were satisfied that the Applicant had not undertaken the work experience stated in the employment reference provided to the TRA.
14. On 9 January 2012 the application for a visa was assessed.
15. By letter dated 9 January 2012 the Applicant was invited by the Department to comment on suspected fraudulent information supplied as part of his visa application and that he may not satisfy PIC 4020 because as a result of an investigation conducted by the First Respondent in February 2011 into the restaurant where he had stated he had completed his work experience the owner was unable to verify his identity and confirmed he had not provided the work reference letter.
16. On 7 February 2012 the Applicant responded to an invitation to provide further comment enclosing inter alia a statutory declaration from the owner of the restaurant confirming that the Applicant had worked in his restaurant.
17. On 9 March 2012 the Applicant was informed that his visa application had been refused and that the skills assessment the Applicant provided for his nominated occupation on 18 January 2010 was a bogus document within the meaning of section 97(c) of the Act, that it was provided to the department in connection with his application and did not meet PIC 4020.

18. On 29 March 2012 the Applicant applied to the MRT to review the decision of the First Respondent's delegate.
19. On 28 June 2012 the MRT wrote to the Applicant inviting him to a hearing to give oral evidence and present arguments.
20. On 20 July 2012 the Applicant attended a hearing at Brisbane.
21. On 26 July 2012 the MRT wrote to the Applicant inviting comment on or response to certain information which the MRT considered would, subject to such comments or response, be a reason or part of a reason for affirming the decision under review. That information concerned an interview with the owner of the restaurant in February 2011.
22. By letter dated 23 August 2012 the Applicant responded.
23. On 21 September 2012 the MRT affirmed the decision of the First Respondent's delegate to refuse to grant the visa and provided notification of that decision under cover of a letter dated 25 September 2012.
24. The MRT detailed its findings and reasons at [48] to [68] of its Decision Record finding inter alia that it did not accept that the Applicant worked as an unpaid cook at the restaurant or that he worked for 922 hours or that he undertook all of the duties claimed in the work reference. The MRT found that the TRA assessment was a document obtained because of a false and misleading statement being a work reference and was a bogus document as defined by the Act. It found that the Applicant did not satisfy PIC 4020 and therefore did not meet clause 485.224 of the Regulations in relation to the visa. In considering whether to waive the requirements of PIC 4020(1), it found that the Applicant did not provide any claims in support of a finding that there were compelling or compassionate circumstances to justify a waiver of the requirements of PIC 4020(1).
25. On 19 October 2012 the Applicant applied to this Court for judicial review.

Applicable legislation

26. Section 476 of the Act provides that the Federal Circuit Court of Australia has jurisdiction to review decisions unless, inter alia, it is a privative clause decision.
27. Section 474 of the Act provides that the decision of the MRT is a privative clause decision. However, if the decision contains a jurisdictional error the decision is not protected by s.474 and is the subject of judicial review (*Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at [76]).
28. In *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323, McHugh, Gummow and Hayne JJ at [82], citing a passage in *Craig v South Australia* (1995) 184 CLR 163 explained the meaning of jurisdictional error as follows:

“..an administrative tribunal ... falls into an error of law which causes it to identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely on irrelevant material or, at least in some circumstances, to make an erroneous finding or to reach a mistaken conclusion, and the tribunal's exercise or purported exercise of power is thereby affected, it exceeds its authority or powers. Such an error of law is jurisdictional error which will invalidate any order or decision of the tribunal which reflects it”

29. In light of the findings of the Tribunal s.97 of the Act and PIC 4020 is relevant.
30. Section 97 defines a bogus document as follows:

“bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

(a) purports to have been, but was not, issued in respect of the person; or

(b) is counterfeit or has been altered by a person who does not have authority to do so; or

(c) was obtained because of a false or misleading statement, whether or not made knowingly.”

31. Schedule 4 provides the PIC 4020 as follows:

(1) There is no evidence before the Minister that the Applicant has given, or caused to be given, to the Minister, an officer, the Migration Review Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

(a) the application for the visa; or

(b) a visa that the Applicant held in the period of 12 months before the application was made.

(2) The Minister is satisfied that during the period:

(a) starting 3 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the Applicant and each member of the family unit of the Applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

32. (2AA) However, subclause (2) does not apply to the Applicant if, at the time the application for the refused visa was made, the Applicant was under 18.

33. (2A) The Applicant satisfies the Minister as to the Applicant's identity.

34. (2B) The Minister is satisfied that during the period:

(a) starting 10 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

neither the Applicant, nor any member of the family unit of the Applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).

(2BA) However, subclause (2B) does not apply to the Applicant if, at the time the application for the refused visa was made, the Applicant was under 18.

(3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or

information that is false or misleading in a material particular because of information given by the Applicant.

(4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

(a) compelling circumstances that affect the interests of Australia; or

(b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

(5) In this clause:

"information that is false or misleading in a material particular" means information that is:

(a) false or misleading at the time it is given; and

(b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

Note: Regulation 1.03 defines bogus document as having the same meaning as in section 97 of the Act.

Grounds of review

35. The Application for Review contains two grounds:

"1. The Tribunal erred in law in finding that the Applicant did not meet the public interest criterion (PIC) 4020(1) of the Regulations thus did not satisfy cl.485.224 of the Regulations.

Particulars

(a) The Tribunal failed to consider whether Trades Recognition Australia was validly approved and specified (reg. 2.26B(1) and (1A)) as the relevant assessing authority for the occupation of Cook, relevant to the Applicant's visa application, at the time of its decision by legislative instrument IMMI 12/068, which it was not.

- (b) *The Tribunal erred in finding that cl.485.221 was an operative provision in relation to the Applicant's visa application.*
 - (c) *The Tribunal erred in its failure to consider whether Trades Recognition Australia was a relevant assessing authority at the time when the Applicant gave or caused to be given to Trades Recognition Australia information.*
 - (d) *The Tribunal erred in construing that information given or caused to be given by the Applicant to Trades Recognition Australia was information given to a relevant assessing authority for the purposes of determining whether the applicant met PIC 4020(1).*
 - (e) *The Tribunal misconstrued or misapplied the definition of "information that is false or misleading in a material particular" as defined in PIC 4020(5). The Tribunal erred in concluding that the "employment experience" information provided by the Applicant to Trades recognition Australia was relevant to clause 485.224 of the Regulations.*
2. *The decision of the Second Respondent was affected by jurisdictional error because the Second Respondent in affirming the decision of the First Respondent's delegate made on 9 March 2012, did not take into account or properly consider the individual circumstances of the Applicant giving rise to a constructive failure to exercise jurisdiction, or alternatively an apprehension of bias.*

Particulars

Because of the extensive similarity in the reasons for decision between this matter and the reason for the decisions in MRT Case Number 1204443 which is now the subject of proceedings SYG2375 of 2012 in this Honourable Court and MRT Case Number 1204021 which is now the subject of proceeding SYG2453 of 2012 in this Honourable Court."

Ground 1

36. Ground 1 of the Applicant's amended application has five sub-paragraphs. I propose to consider these together as was done in submissions.
37. The Applicant's first ground of review as detailed in his Outline of Submissions is that the decision of the Second Respondent should be set aside because the TRA was not a valid assessment authority at the time the work experience letter was provided to it and for that reason the work experience letter given to the TRA by the Applicant - the assessment being found to be "a bogus document" - was not given "*in relation to*" the application for the visa as required by PIC 4020(1).² In short, it is contended that there is no sufficient nexus or connection between the document given to the TRA and the application for a visa and consequently no failure by the Applicant to comply with the criterion and that even if the TRA assessment is a "bogus document" that document (i.e. TRA assessment) had no relevance to the task the Minister or his delegate needed to perform in considering whether to grant the visa to the Applicant.
38. However, there is no merit in this submission and no jurisdictional error as asserted.
39. The authorities, which bind me are clear, and that is, it is not whether the TRA was properly specified under the Regulations and had the relevant power to make a skills assessment for the purpose of the Act and Regulations, but whether the Applicant had given or caused to be given to the Minister or one of the other specified entities a bogus document within the meaning of s.97 of the Act, here a document obtained because of a false or misleading statement (a work reference).³
40. As Riley FM (as Her Honour then was) said in *Batra v Minister for Immigration and Citizenship* [2012] FMCA 544 at [48]:

² Paras 19 -22; 28-30 Applicant's Outline of Submissions

³ See for example *Mudiyansele v Minister for Immigration & Anor* [2012] FMCA 887 (Emmett FM) at [20]; *Rafi v Minister for Immigration & Anor* [2012] FMCA 1002 (Hartnett FM) at [30]; *Mudiyansele v Minister for Immigration and Citizenship* [2013] FCA 266 (Tracey J) [23]-[26], [37]

“I accept absolutely that the TRA skills assessment of the applicant had no legal effect, as a skills assessment. However, that does not mean that the skills assessment should be treated as never having existed, or as never having been sent to an officer or an authorised system”

41. In the later decision of *Kaur v Minister for Immigration and Border Protection & Anor* [2013] FCCA 2209 the Applicant was found not to have satisfied the public interest criteria even though the TRA assessment found to be a bogus document had been revoked. In *Kaur* Barnes J said at [73] to [74]:

“73. ... the fact that TRA was not properly specified by reg 2.26B of the Migration Regulations at the time the skills assessment was given to the Minister does not mean that the purported skills assessment was not a bogus document given or caused to be given to the Minister. As counsel for the Applicant acknowledged, in Batra Riley FM found at first instance that a TRA skills assessment that had no legal effect as a skills assessment because at the time of the assessment TRA had no power to make a skills assessment for the purposes of the Migration Act and Regulations, was nonetheless a bogus document within s 97 of the Act as a document the Applicant obtained because of a false or misleading statement (being a false work reference).

74. I note that on appeal (see Batra v Minister for Immigration and Citizenship (2013) 212 FCR 84; [2013] FCA 274) Murphy J agreed that while the skills assessment was not effective as a skills assessment, it was nonetheless a bogus document within the Act for the purposes of s 103 of the Act (see [54]–[61]). Hence the Applicant had breached s 103 of the Act and triggered the visa cancellation provisions in the Act.”

42. Whilst the Applicant referred the Court to the decision of Driver FM (as he then was) in *Singh v Minister For Immigration & Anor* [2012] FMCA 145, in particular at [65], it is not proper to follow that particular decision in light of the authorities.
43. Further in a subsequent decision in the same matter (*Singh v Minister for Immigration and Citizenship* [2013] FMCA 243) Driver FM accepted at [10, [11] and [12] that the Tribunal was entitled to have regard to the fact that Mr Singh had submitted a bogus document, being the first skills assessment and that whether the TRA was validly appointed or not it still met the definition of bogus document

“regardless of whether the TRA was authorised to make the assessment”.

44. Accordingly, the fact that the TRA is not a relevant assessing authority at a particular time does not change the nature of the document if it is found to be bogus.

45. Next, the submission on behalf of the Applicant that there is no sufficient nexus between the provision of the document given to the TRA and the application for a visa and consequently no failure by the Applicant to comply with the criterion in PIC 4020, is also rejected.

46. As Tracey J in *Mudiyanselage v Minister for Immigration* [2013] FCA 266 at [31]:

“... The mere submission of a bogus document as defined in s 97 of the Act is sufficient to attract the operation of PIC4020(1) regardless of the contents of such a document.”

47. The MRT found that there was evidence to conclude that the TRA assessment was a bogus document (at [62].) That is sufficient to find that the Applicant had not satisfied PIC 2040(1). That is what the MRT concluded. Having found that the Applicant provided a TRA assessment to First Respondent and to the tribunal (at [63]) and having provided same to one of the entities which fall within the category of bodies in the criterion, the MRT concluded at [64] that it was not satisfied that there *“is no evidence before it that the Applicant has given, or caused to be given to TRA, a relevant assessing authority or the Minister a bogus document in relation to the application for a visa.”*

48. Further and as submitted on behalf of the First Respondent, the MRT having found that the work experience letter contained false and misleading information in a material particular, namely the hours the Applicant worked as a cook and that the document having been provided to both the Department and MRT in relation to his application for the visa the Applicant would also be in breach of PIC 4020 (see *Bari v Minister for Immigration & Anor* [2013] FMCA 14 at [39] to [46]).

Ground 2

49. The Applicant's second ground is that the MRT failed to properly consider the particular circumstances of the Applicant's case but instead considered the matters as essentially indistinguishable from two other decisions as particularised, thereby constructively failing to exercise jurisdiction and demonstrating apprehended bias. It is submitted that a reading of the reasons of the MRT in this matter, together with the reasons for decision in relation to the matters in *Sekhon* (SYG 253 of 2012) and *Nanre* (SYG 2375 of 2012), all of which were decided by the same member, demonstrate that the MRT failed to pay proper attention to the facts and circumstances of this matter adopting instead a general global approach to the fact finding process and its decision making.⁴

50. Apprehended bias, like procedural fairness, is an element of natural justice and a breach of procedural fairness would amount to an error of law (*Goodwin v Commissioner of Police* [2012] NSWCA 379 at [19] per Basten JA with whom Allsop and Young AJA agreed). However, as the Full Court observed in *Minister for Immigration and Citizenship v SZNPG* [2010] FCAFC 51 at [18]:

"It is a rare case in which a court will find that a decision maker has breached the natural justice hearing rule by exhibiting bias based simply upon the decision maker's reasons: SBBS v Minister for Immigration and Multicultural and Indigenous Affairs (2002) 194 ALR 749 at [44]. The same is the case in relation to apprehended bias. Ordinarily a party would need to show some conduct on the part of the decision maker, apart from the decision maker's expression of the decision maker's reasons, which would indicate that the decision maker has been guilty of pre-judgment or was in any way biased."

51. I am unable to conclude from a reading of the subject decision and the decisions with respect to Mr Sekhon dated 28 September 2012 and Mr Narne dated 21 September 2012 that a hypothetical fair minded lay person might conclude that the MRT had not brought a fair and impartial mind to the making of this decision (See *SZQHH v Minister for Immigration and Citizenship* (2012) 200 FCR 223 at [37] per Rares

⁴ Paras.31,48 & 49 Applicant's Outline of Submissions

and Jagot JJ).<http://www.austlii.edu.au/cgi-bin/LawCite?cit=%282004%29%20214%20ALR%20264>

52. Further whilst there are factual and other similarities in the reasoning in the decisions of *Sekhon* and *Nanre* with the present case including similar phrasing, and whilst the critical findings are similar in all three cases, those factors do not give rise to a finding that the MRT failed to consider each case on its merits and therefore evidenced apprehended bias or a failure to exercise jurisdiction.
53. It is unsurprising that there would be similarities between the decisions given the similar factual matrix involving the three Applicants all seeking to satisfy requirements for the same visa, all working at and seeking to rely upon a reference from the same restaurant to support their visa application; where the site visit conducted on 15 February 2011 related to all three Applicants, where that visit resulted in all three Applicants not being identified by the owner of the restaurant, where the owner recanted his earlier denial made during the February visit and later provided a statutory declaration that each of the three Applicants had in fact worked in the restaurant and where there was a finding that the owner of the restaurant and his wife gave vague and inconsistent evidence.
54. As was observed in *SZQHH v Minister for Immigration and Citizenship* (supra) (Rares and Jagot JJ) at [38]:

“The mere fact that a decision-maker has previously expressed a view on the same or a similar subject does not, of itself, give rise to an apprehension that he or she will not bring a fair and impartial mind to the new decision to be made: see for example in relation to judges Re JRL; Ex parte CJL (1986) 161 CLR 342 at 352 per Mason J. After all, decision-makers can be expected to apply the law and relevant policies in a consistent and predictable way. Likewise, decision-makers in the position of a reviewer or administrative official frequently will have to decide the same issues raised by different persons in separate applications including when a number of persons make generic claims. A decision-maker must have a fair and unprejudiced mind when he or she comes to decide a question including one concerning a generic claim that he or she has addressed on another occasion. However, that does not mean that he or she must have a blank or empty mind on the topic”

55. On any fair view, a consideration of the three decisions reveals differences sufficient to enable a conclusion that the MRT properly considered the individual circumstances of each case.
56. For example, and as submitted on behalf of the First Respondent, in each of the decisions the MRT noted:
- a) the different hours worked by each of the Applicants: this Applicant 922 hours,⁵ Mr Nanre 936 hours,⁶ and Mr Sekhon 900 hours;⁷
 - b) the different dates worked in the restaurant: this Applicant from 13 February 2008 to 2 September 2009⁸, Mr Nanre from 1 October 2007 to 15 January 2009⁹ and Mr Sekhon between June 2008 and August 2009¹⁰; and
 - c) the different detail with respect to the bringing into existence of the work experience letter with both Mr Sekhon and Mr Nanre claiming they did not copy the work experience letter or allow others to do so,¹¹ whilst the Applicant claimed he copied the letter and had the owner sign it.¹²
57. By way of further example and critical to the findings with respect to the bogus document a comparison of the MRT decision at [32] of CB 243 and the *Nanre* decision at [41] of Annexure SHW- 2 to the Affidavit of Ms Seone Hwa Woolf evidence different detail, as does [33] on page 43 of the same affidavit relating to the circumstances of the reference letter all of which evidenced an understanding of the individual facts and circumstances of the two cases.

⁵ Page 249 at [61], [62] CB

⁶ *Nanre* decision at [19], [80]

⁷ *Sekhon* decision at [30], [79]

⁸ Page 241 at [19] CB

⁹ *Nanre* decision at [19]

¹⁰ *Sekhon* decision at [22]

¹¹ *Nanre* and *Sekhon* decisions at [78] & [72] respectively

¹² Page 243 at [32] CB

58. Further and without attempting to be exhaustive:¹³
- a) Mr Sekhon provided additional information not provided by the Applicant or Mr Nanre;¹⁴
 - b) the discussion of work colleagues was different¹⁵; and
 - c) the description of work duties was different.¹⁶
59. Whilst the date of the work reference in *Nanre* being 5 September 2009 appears to be an error and similarly whilst the reference to 900 hours in the final paragraph at [42] of CB of the MRT decision may be an error this is likely explicable (see for example the earlier reference to 900 hours in the same section being information said to have been provided by the owner during the site visit) I am unable to conclude as submitted by Counsel for the Applicant that that evidenced a conflating of the facts and that a reasonably informed observer would take the view that the decision maker had not properly turned his or her mind to the individual matters. The three decisions must be read in their entirety.
60. Put another way I am unable to conclude that the MRT did not give the Applicant's matter "*fresh consideration*" (see *SZQHH v Minister for Immigration and Citizenship* (supra) at [41] citing Hayne J in *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [185] to [186]) or evidenced a preconceived notion relevant to an issue in dispute and decided the case by reference to that preconception in disregard of the evidence and submissions (*Goodwin* (supra at [21])).

¹³ See paras[34] – [[40] of Applicant's Outline of submissions

¹⁴ *Sekhon* decision at [23]

¹⁵ Page 242 at [30] CB; *Nanre* and *Sekhon* decisions at [30] –[31] & [77] respectively

¹⁶ Page 242 at [29] CB; *Nanre* and *Sekhon* decisions at [32] & [34] and [35] respectively

61. In summary, whilst there are similarities and common features in the three decisions - to expected given the common features of the visa applications and the evidence presented to the MRT in each decision - I am unable to conclude that the MRT has not independently considered the individual circumstance of the each case and that the Applicant has been able to show “*conduct on the part of the decision maker, apart from the decision maker’s expression of the decision maker’s reasons which would indicate that the decision maker has been guilty of pre-judgment or was in any way bias.*” (*SBBS v Minister for Immigration and Multicultural and Indigenous Affairs* (supra)).¹⁷
62. The Court is accordingly unable to conclude jurisdictional error by reason of ground 2.

Conclusion

63. I find that the Applicant has failed to demonstrate jurisdictional error in the decision of the MRT either in finding that the Applicant did not meet PIC 4020(1) and thus did not satisfy cl.485.224 of the Regulations or by reason of a constructive failure to exercise jurisdiction or alternatively an apprehension of bias by the MRT.
64. For the sake of completeness and with respect to the reference to cl.485.221 in the Grounds of Review the MRT did not appear to make any specific findings with respect this clause being an operative provision in relation to the application for a visa. Nor was it addressed in submissions. However if I am wrong in that for the reasons I have advanced in dismissing the application, it does not matter.
65. The application must be dismissed. I so order.

I certify that the preceding sixty-two (62) paragraphs are a true copy of the reasons for judgment of Judge Purdon-Sully.

Date: 10 December 2014

¹⁷ See also *SZQHH* (supra) at [44]